

REMARKS

As an initial matter, the applicant notes that while the Examiner has considered the references disclosed in the Information Disclosure Statements dated April 12, 2002 and March 3, 2003, as evidenced by the initialed copy of the PTO-1449 accompanying each of the Information Disclosure Statements and enclosed with the official action, it appears the Examiner has not considered the references disclosed in the Supplemental Information Disclosure Statement dated March 3, 2004. In particular, an initialed copy of the PTO-1449 from the Supplemental Information Disclosure Statement was not included in the present official action. As such, a copy of the Supplemental Information Disclosure Statement and the associated PTO-1449 form are being filed herewith, and the applicant respectfully requests the Examiner to consider and initial the same.

The specification has been amended to correct a typographical error. In particular, "inflammable" has been replaced with "non-flammable." Claims 6, 34 and 35 have been amended to correct editorial errors.

Claims 1-42 are at issue. Claims 1-14, 16, 17-27, 29, 30-33, 35, 36-40 and 42 were rejected as unpatentable over LeJeune et al. (U.S. Pat. 6,290,914) in view of Tendick, Sr. (U.S. Pat. 4,892,711). Claims 15, 28, 34 and 41 were rejection as upatentable over LeJeune et al. in view of Tendick, Sr. and further in view of Imus (U.S. Pat. 5,368,419). The applicant respectfully traverses the rejections. Reconsideration is requested.

The rejections of claims 1-42 under 35 U.S.C. §103 as obvious over LeJeune et al. should be withdrawn because the Applicant was in possession of the subject matter recited in the claims prior to the filing date of LeJeune et al.

LeJeune et al. was filed on October 11, 2000. Submitted herewith is a declaration of the inventor, John N. Wesley, pursuant to 37 C.F.R. §1.131 ("the Rule 131 declaration"). The Rule 131 declaration demonstrates that the fragrance assembly for a liquid candle as recited in claim 1 of the patent application, the candle as recited in claim 17 of the patent application, the fragrance candle as recited in claim 30 of the patent application, and the method of adding a fragrance material to a liquid candle as recited in claim 36 of the patent application, were in the possession of the applicant at least as early as the October 11, 2000, filing date of LeJeune et al. Specifically, the Rule 131 declaration demonstrates a successful

reduction to practice of a fragrance throwing liquid candle before the filing date of LeJeune et al., and provides an example of a fragrance assembly for a liquid candle, a candle and a fragrance candle. Further, the Rule 131 declaration provides an example of a method of adding a fragrance performed before the filing date of LeJeune et al.

In view of the Rule 131 declaration submitted herewith, it is respectfully submitted that the rejection of claims 1-42 as unpatentable over LeJeune et al. under 35 U.S.C. §103 has been overcome and should be withdrawn.

The rejections of claims 1, 17, 30 and 36 under 35 U.S.C. §103 as obvious over LeJeune et al. in view of Tendick, Sr. should further be withdrawn because the action does not make out a *prima facie* case of obviousness. A *prima facie* case of obviousness cannot be established where the references teach away from their combination. See MPEP 2145(X)(D)(2). For example, Tendick, Sr. teaches away from claims 1, 17, 30 and 36 by stating that the reference provides “a fluid burning lamp including a fragrance dispensing element which is arranged to insure that it never contacts any hot part.” (See Tendick, Sr., Col. 1, ll. 39-43). In particular, Tendick, Sr. states that a “burner assembly 20 includes a cap member 28” (col. 2, ll. 48-51) and that “the element 44 is designed to cooperate with a canister 16 to prevent any contact with ... the metal cap member 28.” (Col. 4, ll. 1-5). The element 44 includes support members 52, and Tendick, Sr. further states that “[t]he bottom edges 54 of the support members 52 rest on the ledge upper surface 58 to hold the element top wall 48 away from the crown 30 of the cap member 28.” (Col. 4, ll. 18-24). Tendick Sr. therefore teaches that the element 44 should minimize contact with a receptacle.

One of ordinary skill in the art would therefore not be motivated by Tendick, Sr. to provide a fragrant polymeric element in substantially continuous contact with a perimeter wall of a receptacle as recited in claim 1, because Tendick, Sr. teaches away from a combination that includes a fragrant polymeric element in substantially continuous contact with a receptacle. Further, one of ordinary skill in the art would not be motivated by Tendick, Sr. to provide a polymeric element impregnated with a volatile fragrant medium wherein at least a first surface of the polymeric element is in substantially continuous contact with a perimeter wall of a receptacle as recited in claim 17, because Tendick, Sr. teaches away from a combination that includes a polymeric element in substantially continuous contact with a receptacle. Likewise, one of ordinary skill in the art would not be motivated


by Tendick, Sr. to provide a polymeric fragrance element disposed within a channel of a diathermic receptacle, wherein a generally vertical edge surface is in contact with a wall of the receptacle as recited in claim 30, because Tendick, Sr. teaches away from a combination that includes a vertical edge surface of a polymeric fragrance element contacting a wall of a diathermic receptacle. In addition, one of ordinary skill in the art would not be motivated by Tendick, Sr. to form a fragrant polymeric element in substantially continuous contact with a perimeter wall of a receptacle as recited in claim 36, because Tendick, Sr. teaches away from a combination that includes a polymeric fragrance element in substantially continuous contact with a receptacle.

In view of the foregoing arguments, it is respectfully submitted that the rejection of claims 1-42 as unpatentable over LeJeune et al. in view of Tendick under 35 U.S.C. §103 has been overcome as should be withdrawn.

Accordingly, the applicant respectfully submits that all pending claims are patentable over the art of record and should be allowed. In light of the foregoing, the prompt issuance of a notice of allowance is respectfully solicited. Should the examiner have any questions, the examiner is respectfully invited to telephone the undersigned.

Respectfully submitted,

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